

CITY OF NEWTON, MASSACHUSETTS

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May 19, 2009

June 16, 2009

July 13, 2009

August 17, 2009

Department of Planning and Development Michael J. Kruse, Director

Public Hearing Date:

Land Use Action Date:

90-Day Expiration Date:

Board of Aldermen Action Date:

DATE:

May 15, 2009

TO:

Board of Aldermen

FROM:

Michael Kruse, Director of Planning and Development

Candace Havens, Chief Planner

Alexandra Ananth, Senior Planner

SUBJECT:

Petition #120-09, WILLIAM S. & GILLIAN B. PIERCE for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXPAND A NONCONFORMING STRUCTURE to demolish an existing first-floor porch and to add a small two-story addition onto the south side of an existing single-family dwelling that is legally nonconforming with respect to floor area ratio at 19 GLEN ROAD, Ward 7, Newton Centre on land known as Sec 65, Lot 5, Blk, 7, containing 6,795 sf of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-21(a)(2)(b), 30-21(b) of the City of Newton Rev Zoning Ord, 2007.

CC:

Mayor David B. Cohen

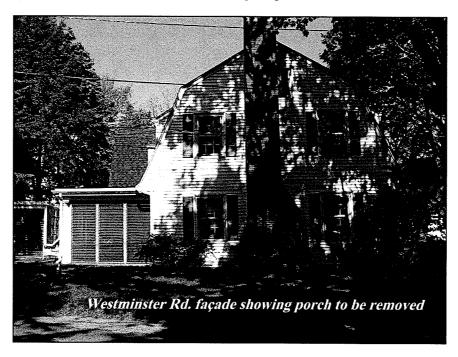
The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



EXECUTIVE SUMMARY

The petitioners are proposing to demolish a small enclosed first floor porch and to construct a modestly scaled two-story addition in its place on the west side of their Glen Road residence. The existing single-family residence is located on a 6,800 sq.ft. lot and is nonconforming with respect to Floor Area Ratio (FAR), as the Board of Aldermen recently deleted in Section 30-15, Table 1, Footnote 7 in its entirety (so so-called 50% demo. loophole). Although the proposed addition will increase the existing nonconformity, the addition will add only 55 new sq.ft. to the footprint as well as 275 sq.ft. to the second story. The addition is designed in keeping with the architecture of the existing house and will include a family room and new rear entrance from the driveway/garage side of the house, with a new study/library above.

The 2007 Newton Comprehensive Plan encourages preservation of existing neighborhoods and the Planning Department believes that modest additions can help preserve the character of existing neighborhoods while allowing for some flexibility to meet the housing needs of today's families. The existing structure is currently in scale with surrounding residences and the proposed residence with addition appears to be in keeping with the existing neighborhood character.



The Planning Department recommends the Land Use Committee visit the site prior to the public hearing to enable consideration of this petition at a working session to follow the public hearing.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When considering this request, the Board should consider whether the increase in FAR would be substantially more detrimental than the existing structure to the surrounding neighborhood.

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The property is located on the corner of Glen Road and Westminster Road in Newton Centre. It is located within a Single Residence 2 District and the neighborhood is characterized by single-family residences (SEE ATTACHMENTS "A" AND "B"). The majority of residences were built between 1914 and 1940, and most of the lots are between 6,780 and 11,000 sq.ft. Colonial architecture dominates the neighborhood, although a variety of early twentieth century architectural styles also are represented. Eighty percent of the lots in the immediate vicinity have floor area ratios between 0.20 and 0.41. The Planning Department has attached a Neighborhood Comparison Chart that includes lot size and FAR among other items (SEE ATTACHMENT "C"). The house at 19 Glen Road is the second smallest lot in the immediate neighborhood and is representative of the average house size.

B. Site

The 6,800 sq. ft. site is a corner lot with the front door facing Glen Road and the southern façade facing Westminster Road. The lot is relatively level and contains a one-car detached garage with a long driveway along the west or rear lot line with access from Westminster Road. The lot is the smallest in the neighborhood but appears in scale with its neighbors.

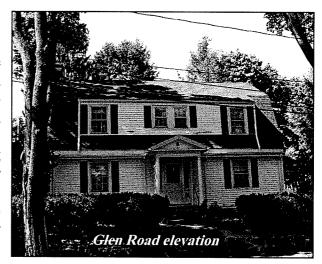
III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

No changes to the use of the single-family residence are proposed.

B. Building and Site Design

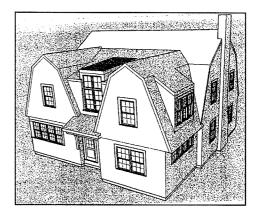
The existing house is circa 1915 Colonial style with a gambrel roof. The petitioners propose to demolish an existing one-story enclosed porch and to replace it with a two-story addition in keeping with the style of the house. The addition will mirror the existing gambrel end with a shed dormer connection between the two ends, adding a total of 330 sq.ft. to the house including 55 new sq.ft. to the first floor and 275 sq.ft. to the second story. The petitioners are hoping to replace the



vinyl siding with cedar shingles as part of the renovation.



Existing west elevation



3D rendering of proposed west elevation

C. Parking and Circulation

Although the petitioners are relocating their driveway slightly to the west, parking and circulation will not change. The petitioners will be straightening out the driveway, which will make backing out into the street easier and safer.

D. Landscape Screening

The petitioners did not submit a landscape plan; however, large evergreen trees currently line the rear lot line and should sufficiently screen the addition and straightened driveway from the adjacent driveway to the west.

IV. COMPREHENSIVE PLAN

The 2007 Newton Comprehensive Plan encourages preservation of existing neighborhoods. The Planning Department believes that modestly sized additions can help to preserve the character of existing neighborhoods while allowing occupants the flexibility to meet the housing needs of today's families. This petition addresses those needs by modifying an existing single-family home to provide a family room with a study and library above, and rear entry in place of an existing enclosed porch. This renovation will help ensure that the house will be usable for current and future residents with only small changes to the exterior of the building and with minimal impact on the surrounding neighborhood. The addition appears to be in keeping with the scale of the existing structure and neighborhood and should not adversely impact the neighborhood.

V. TECHNICAL REVIEW

A. <u>Technical Considerations (Section 30-15)</u>. The Zoning Review Memorandum, dated April 22, 2009 (SEE ATTACHMENT "D"), provides an analysis of the proposal with regards to zoning. The existing house is a lawfully nonconforming structure with regard to lot size, FAR and front setback. A special permit is required to increase the already nonconforming FAR from .38 to .43. The plans respect the

existing nonconforming front setbacks and the addition will not encroach into the side or rear setbacks. Existing and proposed heights are conforming and lot coverage and open space requirements will be met.

B. Recent Zoning Amendment. In the past several years, members of the Board of Aldermen and others have voiced concerns about Footnote 7 of Section 30-15, Table 1 (so so-called 50% demo. loophole). Part (3) of that footnote had been interpreted as providing an exemption from FAR controls when 50% or less of an existing structure was demolished. It read: "FAR requirements shall apply only to...(3) reconstruction where more than fifty (50) percent of an existing structure is demolished..." Although this may not have been the original intention of the provision (because it referred to reconstruction not all construction), in practice it was too often used as a loophole by those seeking significant enlargements of existing homes without regard to FAR limitations.

The Zoning and Planning Committee considered various approaches to addressing the loophole created by the 50% demolition provision. In 2006, the issue was referred to the Zoning Task Force for further study, resulting in Petition #108-07, which recommended amendments to define "50% demolition" and to limit the size of expansions. Petition #108-07 was heard on January 28, 2008 and again on June 23, 2008 (this hearing was closed September 8, 2008). In working sessions in the fall of 2008, the Zoning and Planning Committee indicated interest in eliminating Footnote 7 in its entirety, and a new hearing on the item was held on February 23, 2009. The Board then voted for the deletion of Section 30-15, Table 1, Footnote 7 in its entirety (Ordinance Z-44, dated March 16, 2009 and effective April 6, 2009).

With its removal, FAR requirements apply to all additions and enlargements to existing single- and two-family structures, regardless of scale. If the petitioners had filed for a building permit prior to advertisement of the public hearing of the proposed text amendment, they would have been able to construct the proposed addition by right. However, under the current Zoning Ordinance, the petitioners must seek a special permit to further increase the FAR of this home, which already is nonconforming with respect to FAR (0.3 is the FAR cap in the Single Residence 2 District).

Subsequent to the deletion of Footnote 7, several other homeowners in similar circumstances have contacted the Planning and Inspectional Services Departments to express their frustration with the change. After several discussions and review of the scope and impact on homeowners and possible remedies, draft legislation has been proposed to offer some *temporary and minor relief* to those who have prepared plans with modest additions based on the "old" Zoning Ordinance while a longer term refinement of the FAR regulations is considered (*ATTACHMENT* "F"). Planning Department staff has reviewed the proposal at 19 Glen Road in light of

this proposed legislation; however, this project would not be allowed by right because it already has an FAR of 0.38 where 0.3 is the allowed cap and a maximum FAR of 0.37 is proposed under the proposed interim legislation.

During the upcoming year, and before July 30, 2010 (sunset provision in proposed interim legislation), the Planning and Inspectional Services Departments staff will study and determine new context sensitive (based upon the relationship between existing single- and two-family structures and the lots they occupy in each of the various neighborhoods) and further refinements of the current FAR regulations.

VI. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum the petitioners are seeking approval through or relief from:

- > Section 30-21(a)(2)(b) and 30-21(b), for an expansion of a nonconforming structure with respect to FAR;
- > Section 30-23, for site plan approval; and
- > Section 30-24, for approval of special permit.

VII. FINDINGS AND CONDITIONS

When taking action on this proposal, the Committee should determine whether the increase in FAR would be substantially more detrimental to the surrounding neighborhood than the existing structure. The Committee also may want to consider additional findings such as:

- The use as developed and operated will not adversely affect the neighborhood;
- The site plan presents no nuisance or serious hazard to vehicles or pedestrians;
- Major topographical changes, tree and soil removals have been avoided; and
- ° The proposed renovations are consistent with the goals of the 2007 Newton Comprehensive Plan because it is a modestly sized addition to a single-family residence that helps preserve the character of the existing neighborhood while allowing occupants the flexibility to meet the housing needs of today's families.

Should the Committee wish to recommend approval of this proposal subject upon making the appropriate findings, staff recommends the following conditions:

- 1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/ site plan approval shall be located and constructed consistent with the plans entitled *(plan references to be inserted later)*.
- 2. The petitioners shall maintain all landscaping proposed and installed through approval of this special permit/ site plan in good condition. Any plant material that becomes diseased or dies shall be replaced on an annual basis with similar material.
- 3. No building permit shall be issued pursuant to this special permit/ site plan approval until the petitioners have:
 - a. recorded a certified copy of this board order for the approved special permit/site plan with the Registry of Deeds for the Southern District of Middlesex County; and
 - b. filed a copy of such recorded board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
- 4. No occupancy permit for the use covered by this special permit/ site plan approval shall be issued until the petitioners have:
 - a. filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect and registered engineer certifying compliance with Condition #1.
 - b. submitted to the City Engineer final as-built, record site engineering, utilities, grading and drainage plans in both digital format and hard copy.
 - c. submitted to the Director of Planning and Development, final as-built plans in digital format.

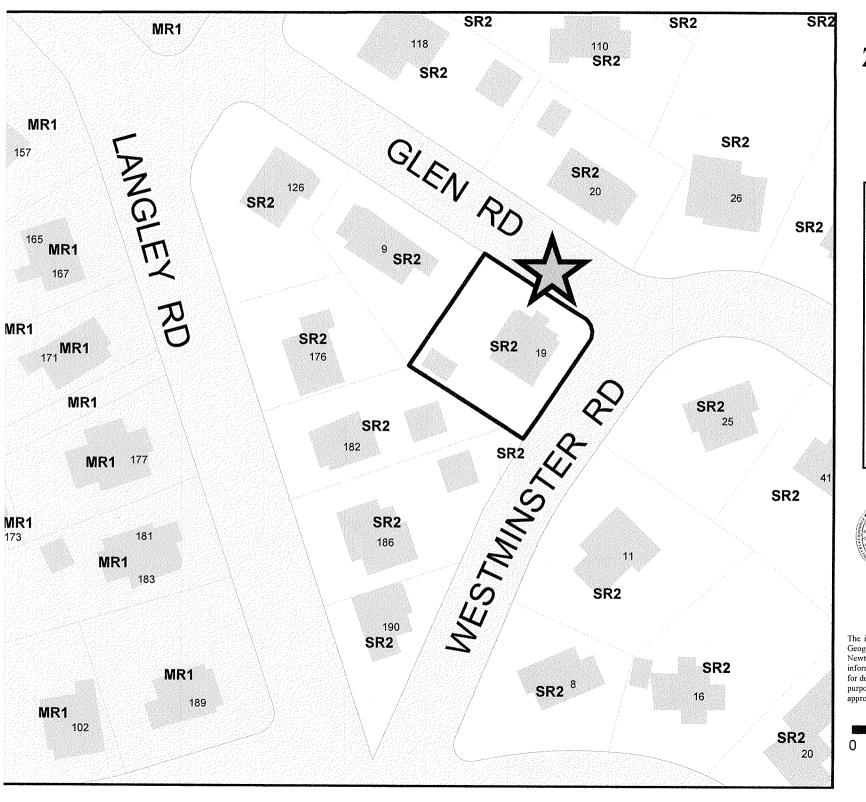
ATTACHMENTS

ATTACHMENT A: ZONING MAP
ATTACHMENT B: LAND USE MAP

ATTACHMENT C: NEIGHBORHOOD COMPARISON CHART

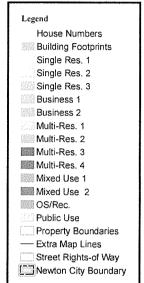
ATTACHMENT D: ZONING REVIEW MEMORANDUM, DATED APRIL 22, 2009
ATTACHMENT E: SITE PLAN SHOWING EXISTING AND PROPOSED CONDITIONS

ATTACHMENT F: PROPOSED LANGUAGE FOR INTERIM FAR RELIEF



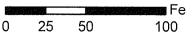
ATTACHMENT A Zoning Map

19 Glen Rd.

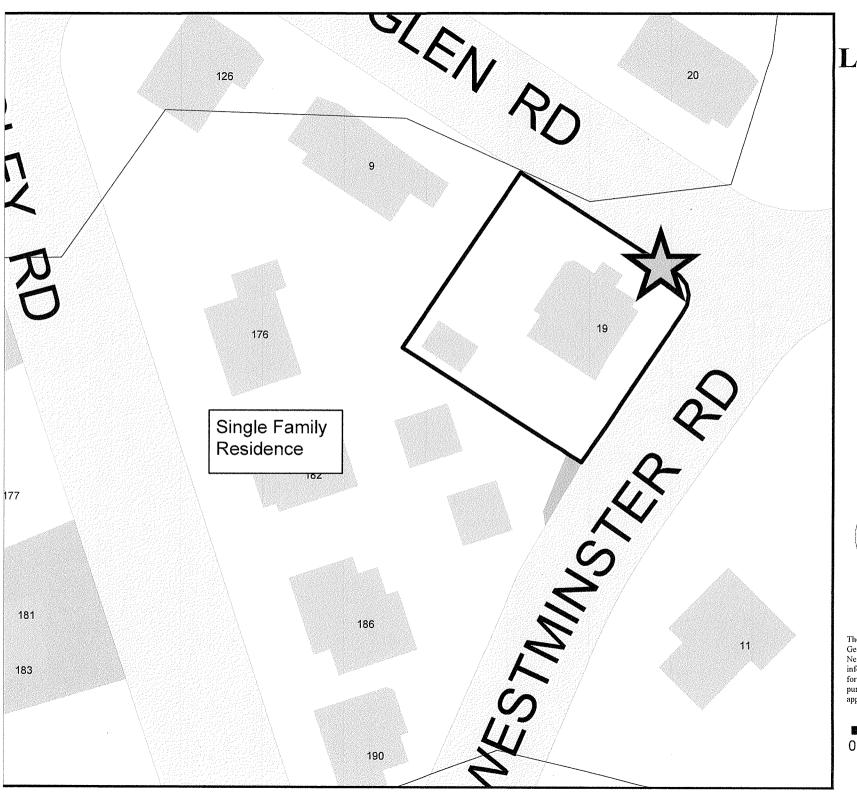




The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.



MAP DATE: May 14, 2009

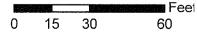


ATTACHMENT B Land Use Map

19 Glen Rd.



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MAP DATE: May 14, 2009

Neighborhood Comparison Chart (Prepared by Planning Department)

	Approx.		Approx. Sq.	Approx.		
<u>Address</u>	Yr. Built	Lot Size	<u>Ft.</u>	<u>FAR</u>	<u>Material</u>	
106 Glen Ave.	1940	7,268	1,843	(0.25)	Vinyl	Cape Cod
112 Glen Ave.	1937	6,989	2,832	(0.41)	Vinyl	Cape Cod
118 Glen Ave.	1917	10,795	2,516	(0.23)	Vinyl	Colonial
19 Glen Rd.	1915	6,800	2,569	(0.38)	Vinyl	Colonial
20 Glen Rd.	1914	7,500	2,052	(0.27)	Clapboard	Colonial
11 Westminster Rd.	1927	10,860	1,952	(0.18)	Wood shingle	Colonial
24 Westminster Rd	1927	8,900	1,950	(0.22)	Brick	Colonial
34 Westminster Rd.	1924	12,670	2,345	(0.19)	Wood shingle	Colonial
40 Westminster Rd.	1921	10,812	2,672	(0.25)	Wood shingle	Colonial
41 Westminster Rd.	1940	10,900	2,352	(0.22)	Wood shingle	Colonial
8 Bartlett Ter.	1924	7,670	1,520	(0.20)	Wood shingle	Old Style
9 Glen Rd.	1917	6,783	2,112	(0.31)	Wood shingle	Colonial
Average		8,996	2,226	(0.26)		
19 Glen Rd. Proposed		6,800	2,898	0.43		

Zoning Review Memorandum

Dt: April 22, 2009

To: John Lojek, Commissioner of Inspectional Services

Fr: Eve Tapper, Chief Zoning Code Official

Candace Havens, Chief Planner

Cc: Michael Kruse, Director, Department of Planning and Development

Paul Rovinelli, architect for William S. & Gilliam B. Pierce

Ouida Young, Associate City Solicitor

RE: Request to allow an increase in FAR.

Applicant: William S. & Gillian B. Pierce

Site: 19 Glen Road
SBL: Section 65, Block 5, Lot 7
Zoning: SR-2
Lot Area: 6,800 square feet

Current use: Single-family residence Proposed use: Single-family residence

Background:

The subject property consists of a 6,800 square foot lot currently improved with a single-family residence. The applicants are proposing to add a small addition onto the south side of the house.

Administrative determinations:

1. The property is in the SR-2 zone and must comply with the dimensional standards of Section 30-15, Table 1 for a pre-1953 lot (see chart below). The applicants are proposing to demolish and rebuild an enclosed porch as well as add a small two-story addition.

SR-2 Zone	Required/Allowed	Existing	Proposed
Lot size	10,000 sq. ft.	6,800 sq. ft.	N/C
Frontage	80 feet	80.4 feet	N/C
Setbacks			
Front	25 feet	13.8 feet	N/C
• Side	7.5 feet	29 feet	29 feet
• Rear	15 feet	28.5 feet	25 feet
FAR	.3	.38	.43
Building Height	30 feet	18.2 feet	18.2 feet
Maximum Stories	2.5	2.5	2.5
Max. Lot Coverage	30%	25%	26.3%
Min. Open Space	50%	67%	66%

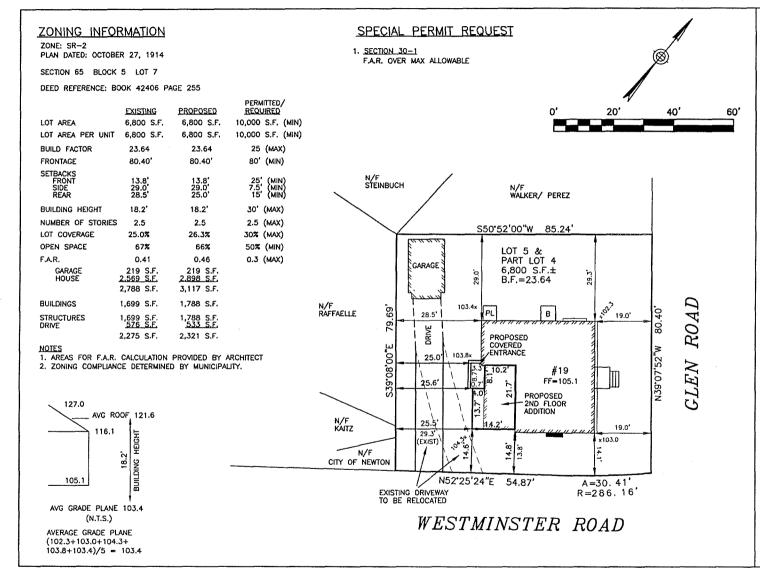
2. The subject property is legally nonconforming with respect to Floor Area Ratio. The proposed addition will increase this nonconformity. The proponent needs a Special Permit from the Board of Aldermen under Sections 30-21(a)(2)(b) and 30-21(b).

- 3. The subject property is legally nonconforming with respect to front setback from Westminster Road. The proposed addition is within the front setback continuing the line from the existing building 14.8 feet from the lot line. However, this addition does not increase the front setback nonconformity because it does not encroach farther into the setback (i.e. closer to the lot line). Per Section 30-21(a)(1)(a), the addition is allowed by right with respect to setbacks.
- 4. See "Zoning Relief Summary" below:

	Zoning Relief Summary	
Ordinance	Site	Action Required
§30-21(a)(2)(b), 30-21(b)	Increase nonconformity with respect to FAR	SP per §30-24

Plans and materials reviewed:

- "Plan of Land in Newton, MA, 19 Glen Road, Existing Conditions," by Everett M. Brooks Co., dated January 3, 2008
- "Plan of Land in Newton, MA, 19 Glen Road, Proposed Conditions," dated August 28, 2008, revised 4/21/09, signed and stamped by Bruce Bradford, Professional Land Surveyor
- "Plan of Land in Newton, MA to accompany the petition of William S. & Gillian B. Pierce 19 Glen Road Newton, MA 02459," dated April 21, 2009, signed and stamped by Bruce Bradford, Professional Land Surveyor
- Architectural Plans for "Pierce Residence, 19 Glen Road, Newton, Massachusetts" as follows all signed and stamped by H. Paul Rovinelli, Registered Architect and dated September 2, 2008
 - o "A1.1 First Floor Demolition and Construction"
 - o "A1.2 Second Floor Demolition and Construction"
 - "A1.3 Foundation Plan and Roof Plan"
 - o "A2.1 Reflected Ceiling Plans"
 - o "A3.1 Exterior Elevations"
 - o "A3.2 Building Sections"
 - o "A4.1 Wall Sections"
 - o "A5.1 Enlarged Plans and Interior Elevations"
 - "A5.2 Enlarged Plans and Interior Elevations"
 - o "A6.1 Window and Door Schedules"





EVERETT M. BROOKS CO.

SURVEYORS & ENGINEERS 49 LEXINGTON STREET WEST NEWTON, MA 02465

> (617) 527-8750 (617) 332-1578 FAX info@everettbrooks.com



PLAN OF LAND IN NEWTON, MA

19 GLEN ROAD PROPOSED CONDITIONS

PREPARED FOR: WILLIAM S & GILLIAN B PIERCE 19 GLEN ROAD NEWTON, MA 02459

SCALE:					
DATE: A	NUGUST	28.	200	80	
DRAWN:	ES				
CHECK:	BB				
REVISION	VS:				
REVISION 4/21/09		INFO	RMATI	ON	E
		INFO	RMATI	ON	ES
		INFO	RMATI	ON	ES

PROJECT NO. 23090

Subritted for

Docket #142-09: <u>Ald. Baker, Danberg, Hess-Mahan, Mansfield, Parker, and Yates</u> proposing amendment to Newton zoning ordinances which would provide a cumulative FAR bonus of .05 for renovation of existing one and two family homes which meet otherwise applicable dimensional requirements; to provide an additional .02 FAR bonus for renovation of existing one and two family homes on old zoning lots which meet new zoning lot dimensional requirements; to clarify the application of the existing .05 FAR bonus for new construction of one and two family homes; to end such FAR bonuses on June 30, 2010; and to clarify the application of the de minimis rule, in accordance with language provided.

Proposed new language:

Sec. 30-15, Table 1: Delete Footnotes 5 and 6; renumber Footnotes 7 and 8

Sec. 30-15: Add the following new subsection:

- (u) The FAR requirements contained in Section 30-15 Table 1 shall apply to all one and two family structures, whether new or existing, with the following exceptions:
 - 1. For renovation of or addition to existing one and two family structures, a cumulative increase in FAR of up to .05 above the amount shown in Table 1 shall be allowed, whether such structures are conforming or lawfully nonconforming as to FAR, provided that the Certificate of Occupancy for the original construction of the existing structure was granted at least ten years prior to the date of application for additional FAR pursuant to this paragraph or, where no such certificate is available, provided that there is other evidence of lawful occupancy of the existing structure for at least ten years prior to the date of application. Any increase in FAR granted through this section may not create or increase nonconformities with respect to lot coverage, open space, or setback requirements and may not be used in conjunction with Sec. 30-21(c). The provisions of this paragraph shall expire on July 30, 2010.
 - 2. For renovation of or addition to existing one and two family structures on pre-1953 lots meeting all of the criteria of Section 30-15(u)(1), an additional increase in FAR of up to .02 above the amount shown in Table 1 and the amount available in Section 30-15(u)(1) shall be allowed, provided that any renovations or additions proposed using additional FAR granted under this paragraph or Section 30-15(u)(1) shall comply with post-1953 setback requirements, or, if the footprint of the existing structure presently extends beyond the post-1953 setback requirements, shall extend no closer to the lot line than the present structure. The provisions of this paragraph shall expire on July 30, 2010.

- 3. For construction of new one and two family structures, an additional FAR of .05 above the amount shown in Table 1 shall be allowed for initial construction on pre-1953 lots when post-1953 lot setback and lot coverage requirements and pre-1953 open space requirements are met. This provision may not be used concurrently with Sec. 30-15(u)1 or 2, nor shall it apply to additions to any structure. The provisions of this paragraph shall expire on July 30, 2010.
- 4. An increased FAR may be allowed by special permit if the proposed structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood.

Sec. 30-21(c): Delete the word "and" before clause (4) of the first paragraph of this subsection and add the following clause:

, and (5) the *de minimis* relief provided in this section shall not apply to buildings in which the nonconformity is due solely to FAR requirements set out in Section 30-15 Table 1, nor shall it be used to increase the FAR beyond that shown in Table 1.

Resolution 142-09(2): Ald. Baker, Danberg. Hess-Mahan, Mansfield, Parker, and Yates proposing a resolution to request that the Director of Planning and Development review and analyze the definition of "Floor area, gross" for residential structures as it is used in the definition and calculation of "Floor area ratio" in Section 30-1 of the Revised Ordinances with respect to actual usage, and make recommendations for amendments thereto and in the dimensional regulations contained in Table 1 of Section 30-15, which may also include illustrations, the purpose of which is to regulate the size, density and intensity of use in the construction or renovation of, or additions to a residential structure, to more accurately reflect and be compatible with neighborhood character, and to ensure that a proposed residential structure is consistent with and not in derogation of the size, scale and design of other existing structures in the neighborhood, and is not inconsistent with the city's Comprehensive Plan.